

1 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

2 **IN AND FOR THE COUNTY OF APACHE**

MAR 6 2006

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4 IN RE: THE GENERAL ADJUDICATION
5 OF ALL RIGHTS TO USE WATER IN
6 THE LITTLE COLORADO RIVER
7 SYSTEM AND SOURCE

No. 6417

Contested Case No.

**ORDER FOR SPECIAL
PROCEEDINGS TO APPROVE AN
INDIAN WATER RIGHTS
SETTLEMENT AND STIPULATION**

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10 Contested Case Name: In re Proposed Zuni Indian Tribe Water Rights Settlement.

11 Descriptive Summary: Order of Judge Eddward P. Ballinger, Jr., approving application
12 filed March 1, 2006 to commence special proceedings to consider the proposed
13 settlement of the claimed water rights of the Zuni Indian Tribe and the United States for
14 the benefit of the Tribe.

15 Date of Filing: March 2, 2006.

16 Number of Pages: 7; Exhibit A – 5; Exhibit B – 11; Exhibit C – 4:

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18 This matter came before the Court on March 1, 2006, upon the application of the Zuni
19 Indian Tribe (“Tribe”), the United States of America in its capacity as trustee for the Tribe, the
20 Arizona Game and Fish Commission, the Arizona State Land Department, the Arizona State
21 Parks Board, St. Johns Irrigation & Ditch Company, the Lyman Water Company, Round
22 Valley Water Users’ Association, Salt River Project Agricultural Improvement and Power
23 District, Tucson Electric Power Company, the City of St. Johns, the Town of Eagar, and the
24 Town of Springerville (“Applicants”) for an order for special proceedings to approve a
25 Settlement Agreement dated June 7, 2002, as amended, and a Stipulation dated March 1,
26 2006, pursuant to the Administrative Order issued by the Arizona Supreme Court on
27 September 27, 2000 relating to special procedures for the approval of settlements of Indian

1 water rights or water rights for other federal reservation(s) or federal lands ("Special
2 Administrative Order").

3 The Applicants seek special proceedings to obtain a final Judgment and Decree
4 approving the Zuni Indian Tribe Water Rights Settlement Agreement of 2002, as amended
5 ("Settlement Agreement") and a Stipulation dated March 1, 2006. The Applicants are parties
6 to the Settlement Agreement and the Stipulation. The Settlement Agreement and the
7 Stipulation resolve the rights of the Tribe and the United States to underground water and
8 surface water from the Little Colorado River and its tributaries in Arizona, as these terms are
9 defined by the Settlement Agreement.

10 The Court, having considered the Application for Special Proceedings ex parte, as is
11 authorized by paragraph B(1) of the Special Administrative Order, finds the following:

12 1. The Applicants, who are parties to this adjudication, have reached a proposed
13 settlement of all claims of the Tribe and the United States for the benefit of the Tribe for water
14 rights in the Little Colorado River basin in Arizona. The terms of the Settlement Agreement
15 were approved, ratified and confirmed by the United States Congress in the Zuni Indian Tribe
16 Water Rights Settlement Act, Public Law 108-34, 117 Stat. 788 (2003) ("Settlement Act").

17 2. The Application for Special Proceedings satisfies the requirements of paragraph
18 B(1) of the Special Administrative Order issued by the Arizona Supreme Court as it contains:
19 (1) the Stipulation of the Applicants, which sets forth the terms of the Settlement Agreement
20 and incorporates and attaches as exhibits thereto copies of the Settlement Agreement and an
21 agreement between the Tribe, the United States and Lyman Water Company, as well as a
22 proposed Judgment and Decree adjudicating the water rights of the Tribe and the United
23 States for the benefit of the Tribe, as established in the Settlement Agreement; (2) a request
24 that the Court enter an order approving the Stipulation and the proposed final Judgment and
25 Decree; (3) a description of the special circumstances that prevent the consideration of the
26 proposed settlement in the normal course of the Little Colorado River Adjudication; (4) a
27 proposed order to commence the special proceedings, attaching a description of the terms of

1 the Settlement Agreement, a copy of the Special Administrative Order and a proposed Notice
2 of Settlement; and (5) information indicating the location of copies of the settlement
3 agreement and supporting documents available for review.

4 3. The Settling Parties have satisfied paragraph A of the Special Administrative
5 Order which specifies the conditions warranting special procedures to consider the proposed
6 settlement:

7 a. The water rights claims of the United States for the benefit of the Tribe,
8 which are described in statement of claimant numbers 39-91736 through 39-91752, are within
9 the jurisdiction of the Court under the principles of Arizona v. San Carlos Apache Tribe of
10 Arizona, 463 U.S. 545 (1983) and United States v. Superior Court, 144 Ariz. 265, 697 P.2d
11 658 (1985).

12 b. All parties to the Settlement Agreement, other than the United States, the
13 Tribe, and the State of Arizona are claimants in this adjudication proceeding whose claims are
14 adverse to statement of claimant numbers 39-91736 through 39-91752 by the United States for
15 the benefit of the Tribe.

16 c. The Settlement Agreement establishes the water rights of the Tribe and
17 the United States for the benefit of the Tribe in the Little Colorado River Basin in Arizona. A
18 description of the water rights of the Tribe and the United States for the benefit of the Tribe,
19 as established in the Settlement Agreement, is set forth in Exhibit A to this Order, which is
20 incorporated herein by reference.

21 d. The terms of the Settlement Agreement were approved, ratified and
22 confirmed by the United States Congress in the Zuni Indian Tribe Water Rights Settlement
23 Act, Public Law 108-34, 117 Stat. 788 (2003), but Congress' confirmation is conditioned
24 upon approval of the proposed settlement by the Court.

25 e. Special circumstances exist that prevent the consideration of the
26 Settlement Agreement and the Stipulation in the normal course of the adjudication. Those
27 special circumstances are that the enforceability of the Settlement Agreement, approved by

1 Congress in the Settlement Act, is conditioned upon the entry of an order by the Court, no
2 later than December 31, 2006, approving the Settlement Agreement. Section 9 (a) (12) of the
3 Settlement Act and Paragraph 3.1.K of the Settlement Agreement provide that the Settlement
4 Agreement will not be effective unless it is approved in this proceeding on or before
5 December 31, 2006. Under the normal course of the Little Colorado River Adjudication, the
6 claims for water rights of the Tribe and the United States for the benefit of the Tribe would
7 not be considered by the Court before December 31, 2006.

8 4. The proposed settlement of all of the claims for water rights of the Tribe and the
9 United States for the benefit of the Tribe is a lengthy and complex agreement involving many
10 parties, many separate documents and attachments, exchanges of water, and both monetary
11 and non-monetary consideration. The Hydrographic Survey Report concerning present and
12 potential water uses of the Zuni Indian Tribe, which would be prepared by the Arizona
13 Department of Water Resources ("ADWR") in the normal course of the adjudication to assist
14 the Court and parties, has not been scheduled to be commenced. Without the expert assistance
15 of ADWR, it will be difficult for the Court and other parties to the Little Colorado River
16 adjudication to understand and evaluate the proposed settlement. As a consequence, it is
17 appropriate for the Court to order ADWR to prepare a factual analysis and/or technical
18 assessment of the proposed settlement as is authorized by paragraph B(3)(f) of the Supreme
19 Court's Special Administrative Order.

20 NOW, THEREFORE, IT IS ORDERED as follows:

21 1. The Application for Special Proceedings to consider the proposed settlement of
22 all of the claims for water rights of the Tribe and the United States for the benefit of the Tribe
23 is granted. The conditions warranting special procedures have been satisfied. The Applicants
24 shall serve by mail copies of their Application for Special Proceedings and this Order upon all
25 persons listed in the Court-approved mailing list for the Little Colorado River Adjudication.
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1 2. Special proceedings with respect to the Settlement Agreement shall be
2 conducted in accordance with the Special Administrative Order, a copy of which is attached
3 hereto as Exhibit B.

4 3. The Court will consider the proposed settlement under the criteria enumerated
5 by the Arizona Supreme Court in paragraph D (6) of its Special Administrative Order. If this
6 Court approves the Settlement Agreement and the Stipulation and enters a final Judgment and
7 Decree adjudicating the water rights of the Tribe and the United States for the benefit of the
8 Tribe, the judgment shall be binding upon all parties to the Little Colorado River Adjudication
9 except to the extent that the express terms of the Settlement Agreement and the Stipulation
10 provide that non-signing parties will not be bound by the Settlement Agreement and the
11 Stipulation.

12 4. ADWR shall file with the Court no later than May 15, 2006 a factual analysis
13 and/or technical assessment of the Indian water rights subject to the Settlement Agreement.
14 ADWR's report shall at least include the following: (1) a review of the terms of the
15 settlement; (2) a summary of the statements of claimant filed by or for the benefit of the Zuni
16 Indian Tribe; (3) a brief description of the history, physical characteristics, and natural
17 resources of the Zuni Heaven Reservation, emphasizing those facts, events, and plans which
18 may be important in ascertaining the water rights of the reservation; (4) the potential changes
19 in water resources in the Little Colorado River system and source as a result of the proposed
20 settlement; (5) the potential impact of the proposed settlement upon categories of other
21 claimants in the adjudication; and (6) the potential impact of the proposed settlement upon
22 rights to use groundwater underlying or in the vicinity of the reservation and upon the
23 groundwater regulatory program administered by ADWR. The Applicants are ordered to meet
24 with ADWR and to provide ADWR with information and documents necessary for ADWR to
25 complete its factual analysis and technical assessment. Upon filing the report with the Court,
26 ADWR is ordered to serve a copy of the report upon each person appearing on the Court-
27 approved mailing list for the Little Colorado River Adjudication.

1 5. After the filing of the ADWR report, the Applicants shall conduct an
2 informational meeting to provide interested parties in the Little Colorado River Adjudication
3 and the public with information about the proposed settlement. The meeting will include a
4 statement that such meeting has been ordered by the Court, a disclaimer indicating that the
5 Applicants' interests in the proposed settlement may be adverse to the interests of other parties
6 in the Little Colorado River Adjudication, a description of the terms and conditions of the
7 proposed settlement, an announcement of the availability of the ADWR factual analysis and/or
8 technical assessment, and an announcement of the date objections to the proposed settlement
9 must be filed. At the meeting, the Applicants shall make copies of this Order (including
10 exhibits) available to those persons who are present. The meeting will be held at 7:00 p.m. on
11 June 1, 2006, at the Apache County Board of Supervisors' Room, Apache County Annex
12 Bldg., 75 West Cleveland, St. Johns, Arizona.

13 6. The Applicants shall serve by first-class mail a notice upon all claimants (and all
14 assignees and transferees of claimants, to the extent they appear in ADWR's records) in the
15 Little Colorado River general stream adjudication, notifying them of the application to
16 approve the proposed settlement involving the water rights of the Zuni Indian Tribe; the
17 pendency of this special proceeding; the time, date, and location of the informational meeting
18 described in the preceding paragraph; and advising them where complete copies of the
19 application for special proceedings and this Order may be found. Notice will also be provided
20 by publication in papers of general circulation in every county located within the Little
21 Colorado River System and Source for two (2) weeks. The Court approves the use of the
22 Notice of Settlement attached hereto as Exhibit C.

23 7. Objections to the application to approve the proposed settlement shall be filed
24 with the Clerk of the Court in and for Apache County no later than **June 29, 2006**.

25 8. Any Applicant may file a response to an objection no later than **August 8, 2006**.

26 9. ADWR shall make the Application for Special Proceedings with exhibits,
27 including the Stipulation, the Settlement Agreement, the Settlement Act, and the proposed
final Judgment and Decree, as well as this Order with exhibits and ADWR's report described

1 in paragraph four above, available for public inspection and copying at its headquarters during
2 its normal business hours and at its website: <http://www.azwater.gov/dwr>. ADWR shall also
3 make its report described in paragraph four above available for public inspection and copying
4 at the offices of the Clerks of the Superior Court in every county in the Little Colorado River
5 System and Source. The Applicants shall make the Application for Special Proceedings with
6 exhibits, including the Stipulation, the Settlement Agreement, the Settlement Act, and the
7 proposed Judgment and Decree, as well as this Order with exhibits available for public
8 inspection and copying at the offices of the Clerks of the Superior Court in every county in the
9 Little Colorado River System and Source.

10 10. The pretrial orders of the Court apply to these special proceedings to the extent
11 that they are consistent with the Supreme Court's Special Administrative Order.

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13 DATED this 2d day of March, 2006.

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16 EDDWARD P. BALLINGER, JR.
17 JUDGE OF THE SUPERIOR COURT
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